UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DT MANAGEMENT LLC d/b/a DOUBLETREE BY HILTON ONTARIO AIRPORT HOTEL AND EXTREME SERVICES, INC., a Joint Employer

and **Cases 31-CA-160946**
31-CA-160949
31-CA-160950
31-CA-160952
31-CA-163615

UNITE HERE LOCAL 11 **31-CA-165440**

ORDER[1]

The Petition to Revoke Subpoena Duces Tecum No. A-1-PYWPCN filed by Extreme Services, Inc. is denied.[2] The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Petitioner has failed to establish any other legal basis for revoking the subpoena.[3] See generally, *NLRB v. North Bay Plumbing, Inc.*,

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[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] In denying the petition, we consider the subpoena with the Region's clarification that it seeks only documents "in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of [Extreme Services]."

[3] To the extent that the subpoena encompasses some documents that the Petitioner believes in good faith to be subject to the attorney-client privilege, the attorney work-product doctrine, or privacy concerns, this Order is without prejudice to the Petitioner's prompt submission of a privilege log to the Region identifying and describing each such document, and providing sufficient detail to permit an assessment of the Petitioner's claim of privilege or protection. The Petitioner is directed to produce all responsive documents in its possession not subject to any good-faith claim of privilege or protection.

Contrary to our colleague, as discussed at greater length in the Board's Order in *Dolchin Pratt, LLC d/b/a Jimmy John's Gourmet Sandwiches*, 05-CA-135334 (Nov. 6, 2015), we find that the subpoena lies well within the scope of the Board's broad

102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., July 12, 2016

KENT Y. HIROZAWA, MEMBER

LAUREN MCFERRAN, MEMBER

Member Miscimarra, dissenting:

Consistent with Sec. 11(1) of the Act and Sec. 102.31(b) of the Board's Rules and Regulations, as stated in my dissent in *Dolchin Pratt, LLC d/b/a Jimmy John's Gourmet Sandwiches*, 05-CA-135334 (Nov. 6, 2015), I believe that a subpoena seeking documents pertaining to an alleged joint-employer and/or single-employer status of a charged party "requires more . . . than merely stating the name of a possible single or joint employer on the face of the charge." Id. at 3. In particular, the General Counsel must be able to articulate "an objective factual basis supporting such an inquiry." Id. at 4–5. Cf. Casehandling Manual Sec. 10054.4 (stating that "additional and more complete evidence, including all relevant documents," should be obtained if "consideration of the charging party's evidence and the preliminary information from the charged party *suggests a prima facie case*") (emphasis added).

Here, the second amended charge alleging an unlawful termination refers to Doubletree by Hilton Ontario Airport Hotel and Extreme Services as a "joint employer,"

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investigative authority, which extends not only to the substantive allegations of a charge, but to "*any* matter under investigation or in question" in the proceeding. 29 U.S.C. § 161(1) (emphasis added); Sec. 102.31(b) of the Board's Rules. Moreover, nothing in Sec. 11 of the Act or Sec. 102.31(b) of the Board's Rules can be read to impose a requirement that the Regional Director articulate "an objective factual basis" in order to compel the production of information that is necessary to investigate a pending unfair labor practice charge. Nor can such a requirement be justified on the basis of Sec. 10054.4 of the Board's Casehandling Manual, which does not relate to or mention subpoenas.

without additional, factual information about the joint employer allegation. Thus, applying the above-mentioned principles, I would find that the General Counsel has failed to articulate an objective factual basis for subpoenaing documents regarding the possible joint employer relationship between Doubletree by Hilton Ontario Airport Hotel and Extreme Services. I would therefore grant the petition, without prejudice to the ability of the General Counsel to issue a new subpoena seeking this information, if he can establish an objective factual basis supporting such an inquiry, beyond the mere allegation in the charge that Doubletree by Hilton Ontario Airport Hotel and Extreme Services are a joint employer.[4]

Dated, Washington, D.C., July 12, 2016

PHILIP A. MISCIMARRA, MEMBER

[4] As I have stated elsewhere, I do not agree with the Board's revised standard for assessing joint-employer status under the Act. See *BFI Newby Island Recyclery (Browning-Ferris Industries of California)*, 362 NLRB No. 186, slip op. at 21-50 (2015) (Members Miscimarra and Johnson, dissenting).